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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

KENT GRAHAM,

Defendant and Appellant.

B152423

(Super. Ct. No. BA171602)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Judith Champagne, Judge. Modified and, as so modified, affirmed.

Jonathan B. Steiner and Ronnie Duberstein, under appointment by the Court of
Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney
General, Pamela C. Hamanaka, Senior Assistant Attorney General, William T. Harter,
Supervising Deputy Attorney General, and Ryan M. Smith, Deputy Attorney General, for
Plaintiff and Respondent.

Kent Graham appeals following revocation of probation previously granted upon his plea of guilty to petty theft with a prior conviction (Pen. Code, § 666). The court lifted a stay of execution on a previously imposed sentence of three years in prison.

In this case, we accept respondent's concession that each of appellant's Penal Code section 1202.4, subdivision (b), and Penal Code section 1202.45, restitution fines must be \$200.

FACTUAL SUMMARY

The record reflects that on July 17, 1998, appellant committed the above offense in Los Angeles.

CONTENTION

Appellant contends "[t]he trial court's order that appellant pay a higher restitution fine when the court revoked probation was an unauthorized sentence."

DISCUSSION

Each Of The Restitution Fines Must Be \$200.

1. Pertinent Facts.

On October 9, 1998, pursuant to negotiations, appellant entered the above mentioned guilty plea and admitted he violated probation in two other cases,¹ and the court sentenced him to prison for three years, stayed execution thereof, placed him on probation, and ordered him to serve time in local custody.

¹ The two cases were case Nos. BA147923 and BA159190.

The October 9, 1998 reporter's transcript reflects that, during the imposition of probation conditions, the court told appellant, "There is a \$200 mandatory fine that you must pay through the probation officer." The October 9, 1998 minute order reflects, "Make restitution to the restitution fund pursuant to section 1203.04 [of the] Penal Code in the sum of \$200.00." Neither the October 9, 1998 reporter's transcript nor the minute order of that date reflects that the court expressly referred to Penal Code section 1202.4, section 1202.45, a restitution fine, or a parole revocation fine. On July 8, 1999, a probation officer's report indicated that appellant deserted probation. Appellant's probation was summarily revoked that day.

On August 7, 2001, the court found that appellant violated, and was not a suitable candidate for, probation, and lifted the stay of execution. The court also stated, "There will be a \$300 restitution fine as well as a stayed \$300 parole revocation restitution fine in BA171602."²

A minute order printed August 22, 2001, and reflecting proceedings on August 7, 2001, states, "The defendant is to pay a restitution fine pursuant to section 1202.4(b) Penal Code in the amount of \$300.00. The court imposes an additional fine in the sum of \$300.00 pursuant to section 1202.45 of the Penal Code pending a future parole revocation. Said fine(s) are to be collected by the California Department of Corrections pursuant to section 2085.5 Penal Code." (Capitalization omitted.)

² There is no dispute as to the validity of any of the court's actions except those pertaining to the Penal Code section 1202.4, subdivision (b), and Penal Code section 1202.45, restitution fines.

The abstract of judgment in the present case reflects “Financial obligations (including any applicable penalty assessments): [¶] a. Restitution fine of \$300.00 per PC 1202.4(b) forthwith per PC 2085.5. [¶] b. Restitution fine of \$300.00 per PC 1202.45 suspended unless parole is revoked.” The minute order also contains a section to be filled out in the event that the court ordered, pursuant to Penal Code section 1202.4, subdivision (f), that restitution be paid to victims or the restitution fund, but that section is not filled out.

2. *Analysis.*

The October 9, 1998 reporter’s transcript reflects that, on that date, the court told appellant, “There is a \$200 mandatory *fine* that you must pay through the probation officer.” (Italics added.) The parties direct our attention to no other fine to which the court could have been referring except a Penal Code section 1202.4, subdivision (b), restitution fine, and we will accept the parties’ concessions that the trial court then imposed a Penal Code section 1202.4, subdivision (b), restitution fine. Accordingly, on October 9, 1998, the court was also required to impose a \$200 Penal Code section 1202.45 fine. The parties assert that, on that date, the court imposed both fines and stayed execution thereof. It follows, as the parties agree, that on August 7, 2001, when the court lifted the stay of execution, appellant was only required to pay \$200 for the Penal Code section 1202.4, subdivision (b), restitution fine, and \$200 for the Penal Code section 1202.45 restitution fine. (*People v. Chambers* (1998) 65 Cal.App.4th 819, 820-821; *People v. Downey* (2000) 82 Cal.App.4th 899, 920-922; see *People v. Howard*

(1997) 16 Cal.4th 1081, 1088; *People v. Chagolla* (1984) 151 Cal.App.3d 1045, 1050-1051.) We will modify the judgment accordingly.

DISPOSITION

The judgment is modified by striking both the Penal Code section 1202.4, subdivision (b), restitution fine in the amount of \$300, and the suspended Penal Code section 1202.45, parole revocation fine in the amount of \$300, and by imposing a suspended Penal Code section 1202.45 parole revocation fine in the amount of \$200 and, as modified, the judgment is affirmed. The trial court is directed to forward to the Department of Corrections a copy of an amended abstract of judgment reflecting the above modifications and the trial court's imposition of a Penal Code section 1202.4, subdivision (b), restitution fine in the amount of \$200.

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CROSKEY, J.

We concur:

KLEIN, P.J.

KITCHING, J.